



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

March 3, 2008

Mr. Harold Dean Roark  
9970 Highway 421 South  
Trade, Tennessee 37691

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4995**

Subject: DIRECTOR'S ORDER NO. WPC08-0022  
CHERRY SPRINGS SUBDIVISION  
JOHNSON COUNTY, TENNESSEE

Dear Mr. Roark:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Johnson City  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
	)	
<b>HAROLD DEAN ROARK</b>	)	
	)	
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC08-0022</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Harold Dean Roark, (hereinafter the "Respondent") is the owner of a residential development located on Highway 421 South in Johnson County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent through Harold Dean Roark, Registered Agent, at 9970 Hwy 421 South, Trade, Tennessee, 37691.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

## **V.**

Roan Creek and its unnamed tributaries are referred to herein, as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” Roan Creek and its unnamed tributaries and unnamed wetlands have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. In addition, Roan Creek has been classified as a domestic/industrial water supply and a naturally reproducing trout stream.

## **VI.**

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## **FACTS**

## **VII.**

On July 19, 2006, the Respondent submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP. On March 23, 2007, the division issued the

Respondent coverage under the TNCGP. The coverage became effective on March 26, 2007, and expires upon the division's receipt of a Notice of Termination or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water runoff associated with construction activity to the unnamed tributary of Roan Creek, in accordance with the TNCGP terms and conditions.

### **VIII.**

On August 1, 2007, division personnel conducted a complaint investigation at the site and observed that the erosion prevention and sediment control (EPSC) measures, which had been implemented, were improperly maintained and were not in accordance with the SWPPP. Division personnel observed that the Respondent had begun construction activities at an area adjacent to the site, which was not covered under the existing permit. In addition, division personnel observed that the Respondent allowed a sediment release from the site, which migrated into waters of the state. Furthermore, division personnel observed that the Notice of Coverage (NOC) was not posted on site, the SWPPP was not current, and a certified inspector had not been retained to conduct inspections after June 17, 2007, as required by the permit.

### **IX.**

On August 28, 2007, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the August 1, 2007, site inspection. In the NOV the division required the Respondent to install appropriate EPSC measures to prevent further sediment loss from the site within 15 days receipt of the NOV. In

addition, the division required the Respondent to submit in writing the name of the individual conducting inspections of the EPSC measures and a copy of the previous inspection reports within 15 days, along with a Corrective Action Plan (CAP) for the clean up of the unnamed tributary of Roan Creek. In addition, the Respondent was to immediately submit a NOI for the property adjoining Cherry Springs subdivision.

## **X.**

On September 25, 2007, division personnel conducted a follow-up inspection at the site and observed that the Respondent had begun construction activities at an area adjacent to the site, which was not covered under the existing permit. Division personnel deemed that the SWPPP on site should be revised and updated to match current site conditions. Division personnel also observed that EPSC measures were improperly maintained and they did not correspond with the requirements established in the SWPPP. The faulty EPSC measures had allowed an additional release of sediment off site. Furthermore, the respondent had not retained a certified inspector to conduct inspections of the site and the NOC was not posted on site.

## **XI.**

On October 9, 2007, the division issued a NOV to the Respondent for violations observed during the September 25, 2007, site inspection. In the NOV the division required the Respondent to install appropriate EPSC measures to prevent further sediment loss from the site. In addition, the division required the Respondent to submit in writing the name of the individual conducting inspections of the EPSC measures and a copy of the

previous inspection reports. Furthermore, the NOV required the Respondent to submit a CAP for the clean up of the unnamed tributary of Roan Creek, and submit a NOI or modify the existing NOI and SWPPP to include the property adjoining Cherry Springs subdivision.

## **XII.**

On November 8, 2007, division personnel conducted a follow-up inspection at the site and observed that a third release of sediment had occurred and that EPSC measures were improperly maintained and not in accordance with the SWPPP. Division personnel observed that the SWPPP on site needed to be updated, and that construction activities had commenced at an un-permitted area adjacent to the permitted portion of the site. Division personnel also observed that the NOC was still not posted on site and the Respondent did not retain a certified inspector to conduct inspections.

## **XIII.**

During the course of investigating this matter, the division incurred damages in the amount of NINE HUNDRED EIGHTEEN DOLLARS AND EIGHTY-FOUR CENTS (\$918.84).

## VIOLATIONS

### **XIII.**

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. §§69-3-108(b), 114(b), which state in part:

T.C.A. §69-3-108(b):

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## **ORDER AND ASSESSMENT**

### **XIV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation, including photographic evidence, that EPSC measures have been implemented, is to be sent within FIFTEEN (15) DAYS of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the Johnson City Field Office JC-EFO at 2305 Silverdale Road, Johnson City, Tennessee, 37601.
2. The Respondent shall, within FIFTEEN (15) days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the JC-EFO at the address above.
3. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit for division approval a Corrective Action Plan (CAP) for the impacted portions of the unnamed tributary of Roan Creek. The plan shall include the specific methods proposed to remove the sediment from the unnamed tributary. The plan shall be submitted to the manager of the division's JC-EFO.
4. The Respondent shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the approved corrective action plan and send written notification to the manager of the division's JC-EFO upon completion.
5. The Respondent shall maintain EPSC measures until final site stabilization.

6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of THIRTY THOUSAND FIVE HUNDRED DOLLARS (\$30,500.00), payable as follows:
- a. The Respondent shall pay SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) to the division within THIRTY (30) DAYS of receipt of this Order.
  - b. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
  - e. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
  - f. The Respondent shall pay FOUR THOUSAND DOLLARS (\$4,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 5 above in a timely manner.

7. The Respondent is hereby assessed DAMAGES in the amount of NINE HUNDRED EIGHTEEN DOLLARS AND EIGHTY-FOUR CENTS (\$918.84) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.
8. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of THIRY (30) DAYS in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the  
Commissioner of the Tennessee Department of Environment and Conservation on this

3<sup>RD</sup> day of March, 2008.



Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

## **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel (OGC) a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.